

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WILFORD ARMSTEAD,

Petitioner,

v.

STEVEN SINCLAIR,

Respondent.

Case No. C11-563RSM

ORDER DENYING MOTION FOR  
RELIEF FROM JUDGMENT

This matter comes before the Court upon Petitioner's Motion for Relief from Judgment under Federal Rule of Civil Procedure 60(b)(4). Dkt. # 53. Petitioner seeks to have this Court declare void its judgment of July 13, 2013, adopting the Magistrate Judge's Report and Recommendation and denying habeas relief. Dkt. # 38. The Court denied a previous motion for relief from the same judgment on the grounds that Petitioner's motion failed to establish that the judgment entered is void. Dkt. # 42. The Court has since denied the petition for a Certificate of Appealability. Dkt. # 48. As Petitioner's present motion for relief from judgment fails to assert a defect in the federal habeas proceedings, it must also be denied.

1 Federal Rule of Civil Procedure 60(b) “allows a party to seek relief from a final  
2 judgment, and request reopening of his case under a limited set of circumstances,” *Gonzalez v.*  
3 *Crosby*, 545 U.S. 524, 528 (2005), including where the initial judgment is “void.” Fed. R. Civ. P.  
4 60(b)(4). *See U.S. v. Washington*, 653 F.3d 1057, 1059 (9th Cir. 2011). “A judgment is not void  
5 merely because it is erroneous.” *In re Center Wholesale Inc.*, 759 F.2d 1440, 1448 (9th Cir.  
6 1985). Rather, a judgment is void only if a court is powerless to enter the judgment because the  
7 court that rendered it lacked jurisdiction to do so or acted in a manner inconsistent with due  
8 process. *Id.*; *U.S. v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999).

10 Before deciding a Rule 60(b) motion on the merits, the court must first determine  
11 whether the motion is actually a disguised successive habeas petition, in which case the court  
12 lacks jurisdiction to entertain it. *Id.* at 1062. Rule 60(b) may not be used to circumvent the  
13 requirement that a successive habeas petition be pre-certified by the court of appeals as falling  
14 within a narrow exception to the strict successive-petition bar of 28 U.S.C. § 2244(b). *Id. See*  
15 *also, Lewis v. Washington*, 2009 WL 484454, \*1 (E.D. Wash. 2009). Where a Rule 60(b) motion  
16 attacks “some defect in the integrity of the federal habeas proceedings,” it is not considered a  
17 disguised habeas petition and is considered on its merits. *Gonzalez*, 545 U.S. at 532; *U.S. v.*  
18 *Buenrostro*, 638 F.3d 720, 722 (9th Cir. 2011)(explaining that in order to “show a defect in the  
19 integrity of a [habeas] proceeding, [petitioner] must point to something in that proceeding that  
20 rendered its outcome suspect.”). However, where a Rule 60(b) motion expresses an independent  
21 claim for relief from a judgment of conviction or merely “attacks the federal court’s previous  
22 resolution of a claim *on the merits*,” it is in substance a successive habeas petition and must be  
23 treated accordingly. *Gonzalez*, 545 U.S. at 532 (emphasis in original); *Washington*, 653 F.3d at  
24 1063. Before a district court may entertain a success § 2254 petition, the applicant must move in  
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1 the appropriate court of appeals for an order authorizing its consideration. 28 U.S.C. 2244(b)(3).

2 An application for a successive habeas petition may not present a claim that had been presented  
3 in a previous application. 28 U.S.C. 2244(b)(1).

4 The Court finds that Petitioner's Rule 60(b)(4) motion is in its substance an unauthorized  
5 successive 28 U.S.C. § 2254 habeas petition. Petitioner moves for relief on the grounds that the  
6 district court's denial of habeas corpus relief constituted a violation of Petitioner's right to due  
7 process. Petitioner contends that the Court erred in denying his claim to ineffective assistance  
8 of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984). Petitioner repeats arguments  
9 made in both his habeas petition and his first motion for relief from judgment, asserting that his  
10 counsel provided defective representation in the state court trial proceedings by placing  
11 petitioner at the crime scene and refusing to bring a claim of selective enforcement/racial  
12 profiling. Dkt. # 53, p. 5; Dkt. # 3, p. 2 ; Dkt. # 43, p. 5. This Court previously rejected these  
13 arguments, finding that the Washington State Court of Appeals decisions denying Petitioner's  
14 ineffective assistance of counsel claims were not contrary to, or an unreasonable application of,  
15 clearly established law. Dkt. # 30, pp. 17-23. Petitioner's contentions now amount to attacks on  
16 the "federal court's previous resolution of a claim *on the merits*," *Gonzalez*, 545 U.S. at 532,  
17 challenging the Court's "determination that there [] do not exist grounds entitling [] petitioner to  
18 habeas corpus relief." *Id.* at 532, n. 4. Petitioner's contentions brought under Rule 60(b)(4)  
19 therefore constitute "claims" that may be raised only via a new § 2254 motion for habeas relief.  
20 *See Buenrostro*, 638 F.3d at 723 (finding that petitioner's Rule 60(b) motion asserting claims of  
21 ineffective assistance of counsel must be treated as a successive habeas motion). As petitioner  
22 has not sought authorization to file a successive § 2254 petition but merely reasserts arguments  
23 previously denied, this Court is powerless to entertain his motion.  
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1 For the reasons stated herein, it is hereby ORDERED that Petitioner's Motion for Relief  
2 from Judgment Under Rule 60(b)(4) (Dkt.53), construed as an unauthorized § 2254 petition, is  
3 DENIED.

4 Dated this 13<sup>th</sup> day of November 2013.

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8 RICARDO S. MARTINEZ  
9 UNITED STATES DISTRICT JUDGE  
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